

APR 19 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY .ON

Washington, D.C. 20554

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in the above-captioned hearing proceeding designated by the *Hearing Designation Order* released March 15, 1993, by the Chief, Audio Services Division, Mass Media Bureau. A summary of said *Order* was published in the Federal Register on March 18, 1993. 58 FED. REG. 14571-05.

The Guild respectfully submits that, based upon the allegations and evidence set forth and incorporated by reference in its *Petition for Intervention* being filed simultaneously herewith and in its *Petition for Reconsideration* of the *Hearing Designation Order* filed by the Guild April 14, 1993, the issues designated for hearing should be enlarged to add the following issues:

- (1) To determine the circumstances under which GAF Broadcasting Company, Inc. ("GAF"), licensee of WNCN(FM), New York, New York, falsely reported employment data to the Commission and made reference to such false data in a pleading filed herein, and the circumstances under which GAF discovered the falsity of said report and pleading and filed corrections to the same; and to determine the effect thereof on GAF's qualifications and fitness and on its application for renewal of its license.
- (2) To determine whether GAF Broadcasting Company, Inc. ("GAF"), licensee of WNCN(FM), New York, New York, engaged in activities in its dealings with Listeners' Guild, Inc. that constituted abuse of the Commission's processes by means of threats and/or inducements calculated to avert the filing of information and/or arguments before the Commission that would have reflected adversely upon GAF and its applications before the Commission, and if so, to determine the effect thereof on GAF's qualifications and fitness and on its application for renewal of its license.

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As discussed in the Guild's *Petition for Reconsideration* and *Petition to Intervene*, neither of these proposed issues were dealt with in the *Hearing Designation Order*, and each is based in whole or in part upon facts and circumstances which have occurred since the Guild's last filing during the pleading cycle initiated by its *Petition to Deny*.

The First Proposed New Issue

The first proposed issue is based on disclosures made by GAF in a pleading filed just one week before the adoption of the *Hearing Designation Order* -- too late to have been taken into account therein, and indeed, not recited therein as being before the Commission when the *Order* was adopted. The Presiding Officer thus has ample authority to add an issue or issues to address the highly significant and serious questions raised by GAF's false reporting and pleading to the Commission. Although the *Hearing Designation Order* separated all EEO issues from the comparative hearing, that conclusion was reached without the benefit of the most recent and most significant disclosure, and hence cannot foreclose addition of the proposed first issue -- which in any event is of a sharply different character than the other EEO matters pending herein. Moreover, upon adding this issue, the Presiding Officer should bring all other EEO-related issues within the ambit of the hearing, since they are inextricably interwoven.

It should be noted that this first proposed issue involves matters that lie peculiarly within GAF's knowledge, yet with respect to which it has not offered even an unsworn explanation. Only by allowing full discovery and an evidentiary hearing can the truth thereof be ascertained.

The Second Proposed New Issue

The second issue proposed to be added encompasses matters which were raised earlier by the Guild but were ignored in the *Hearing Designation Order* and hence remain pending, as well as one further incident of a similar nature (see the Guild's *Petition for Reconsideration* at 6 n.2). This issue is one with respect to which the Guild has direct knowledge that the other parties adverse to GAF lack; hence its presence in the hearing proceeding to adduce evidence thereon is clearly necessary.

CONCLUSION

In light of the foregoing, the hearing issues should be enlarged to encompass both of the proposed issues set forth above, and the Guild should

Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter of the Application of)

GAF BROADCASTING COMPANY, INC.,)

For Renewal of License of Station)
WNCN (FM), New York, New York)
.....)

File No.
BRH-910201W1

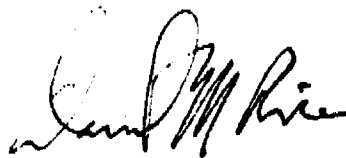
STATE OF NEW YORK)
COUNTY OF QUEENS) Ss:

DAVID M. RICE, an attorney admitted to the bar of the State of New York,
hereby affirms, under penalty of perjury, as follows:

I am the attorney for Listeners' Guild, Inc., the movant herein. In that capacity I have participated in the preparation of the annexed *Motion to Enlarge Issues* as well as the *Petition for Intervention* and the *Petition for Reconsideration* to which said *Motion* refers, as well as in events described in said pleadings. To the best of my knowledge, information and belief, the allegations of the *Motion* and petitions are true and correct.

I declare and affirm under penalty of perjury that the foregoing is true and correct.

Executed on April 19, 1993.



David M. Rice

CERTIFICATE OF SERVICE

I, **DAVID M. RICE**, hereby certify that the foregoing "MOTION TO ENLARGE ISSUES" was served this 19th day of April, 1993, by mailing a true copy thereof by United States first class mail, postage prepaid, to each of the following:

The Honorable Joseph Chachkin
Administrative Law Judge
Federal Communications Commission
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